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**CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066**
**SINGLE MEMBER APPEAL BRANCH**

Appeal No. E/3890/2005-SM[BR]& E/ROA/ 39 /2008-SM[BR] Date 22/05/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S PML INDUSTRIES LTD
VILLAGE BEHRA, P.O. DERABASSI, DISTT. PATIALA

M/S PML INDUSTRIES LTD Appellant

Vs

C.C.E CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 805 /2008 –SM[BR]&M/ 160/2008 dated 25.3.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

**Copy to :**
1. Respondent
   C.C.E CHANDIGARH
   PLOT NO. 19, SECTOR 17-C, CHANDIGARH
2. Adv. / Consult
   MR.J M SHARMA
   G-31, BASANT ENCLAVE, NEW DELHI
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/ROA 39/08, E/Appeal No.3890 /2005-SM

(Arising out of order in appeal No.393/CE/Chd/05 dated 28.10.05 passed by the Commissioner of Central Excise (Appeals), Chandigarh)

For approval and signature:

Hon'ble Mr.P.K. Das, Member(Judicial))

1. Whether Press reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not ?

3. Whether Their Lordships wish to see the fair copy of the Order ?

4. Whether Order is to be circulated to the Departmental authorities?

N

M/s PML Industries — Appellant (Rep. by Shri J.M. Sharma, Advocate)

Vs

CCE, Chandigarh — Respondent (Rep. by Shri Rajmal, DR)

Coram: Hon'ble Mr P.K. Das, Member(Judicial)

Date of Hearing: 25.3.2008

Final Order No. 805 /2008-SM(BR)

Per P.K. Das: Misc order No. 160/08-SM(BR)

The appellant filed this application for restoration of appeal dismissed vide Final Order No. 1766/07 dated 20th November, 2007. The learned Counsel on behalf of the appellants submits that they received the hearing notice for appearing on 17th September, 2007 and the learned Counsel attended but the matter was not reached. He submits that the appellant did not receive the hearing notice for 20th November, 2007 and the ex-parte order was passed.

2. After hearing both the sides and on perusal of the record, I find that there is sufficient reason to recall the order dated 20th November, 2007. Accordingly, the order dated 20th November, 2007 is recalled and the appeal is restored to its original number.

3 As the issue involved is in narrow compass, the appeal is taken up for hearing.

4 The appellant filed a refund claim of Rs. 3,03,507/- on 7th July, 2004 on the ground that during the period 1.3.03 to 19.2.04, they paid excess duty as provided by Sl No.4 of the Notification No. 23/03-Ex dated 31.3.03. The Adjudicating Authority observed that the appellant had passed the incidence of duty to the buyer and credit notes were issued for the said amount. The Adjudicating Authority rejected the refund claim which was upheld by the Commissioner (Appeals). The findings of the Adjudicating Authority revealed that the appellants fulfilled the condition on merit but he has rejected the refund claim on unjust enrichment. The learned Counsel drew the attention of the Bench to the Schedule F of Balance Sheet and Sl No. 13 of the Notes of the Balance Sheet has given the details of recovery on account of Customs/excise duty. He submits that both the authorities below had rejected the claim on unjust enrichment without examining documents.

5. I find that the Adjudicating Authority is required to examine the evidences before rejection. Accordingly, the impugned order is set aside and

the matter is remanded back to the Adjudicating Authority to decide after examining the documents and to pass order in accordance with law. The appeal is allowed by way of remand.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*